

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2022/17**

**IN THE MATTER** of the Education and Training Act 2020

**AND**

**IN THE MATTER** of a referral of conviction by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal

**BETWEEN** **COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

**AND** **LEE-ANNE ERICKA SIMONE ALLEN (LEE WEST)**

Respondent

---

**DECISION OF THE TRIBUNAL**

**2 December 2022**

---

**HEARING:** Held on 14 October 2022 on paper via Teams

**TRIBUNAL:** Rachael Schmidt-McCleave (Deputy Chair)  
Maria Johnson and Neta Sadlier (members)

**REPRESENTATION:** H M Farquhar/L R van der Lem (Luke Cunningham & Clere) for the Complaints Assessment Committee

K C Beazley (Barrister) for the respondent

## Hei timatanga kōrero – Introduction

1. Pursuant to section 493 of the Education and Training Act 2020 (the “Act”), the Complaints Assessment Committee (“CAC”) referred the respondent’s conviction on 14 October 2021 for burglary (under sections 231(1)(a) and 66 of the Crimes Act 1961) to the Teachers Disciplinary Tribunal of the Teaching Council of Aotearoa New Zealand (the “Tribunal”).
2. The CAC’s reasons for referral were that Ms Allen (also known as Ms West) was convicted and sentenced in the Timaru District Court for the above offence and the CAC considered that the conviction warranted action by the Tribunal.
3. The matter was heard on the papers via Teams on 14 October 2022.

## Ko te hātepe ture o tono nei – Procedural History and Preliminary Matters

4. A pre-hearing conference (“PHC”) was held on 26 July 2022. The parties agreed to various timetabling matters. Counsel for the CAC noted at that PHC that, because the respondent was on a Limited Authority to teach, the disciplinary response is limited to censure or no action.
5. The respondent did not seek name suppression at that PHC.

## Kōrero Taunaki - Evidence

### *Agreed Summary of Facts*

6. The ASoF is set out in full below:

#### ***“Background***

1. *The respondent, **LEE-ANNE ALLEN**, is not a registered teacher. She is currently unemployed, though previously taught under a limited authority to teach (“LAT”) which allowed her to teach Te Reo Māori throughout the Timaru District, between February 2019 and February 2020. During the period of her LAT the respondent taught at Awowhenua Māori School in Temuka.*

#### ***Circumstances of the offending***

2. *On 14 October 2021 the respondent was convicted in the Timaru District Court on a charge of being a party to burglary, following an incident in which the respondent and three associates (two male and one female) forced entry to a home on 19 June 2019.*
3. *The maximum penalty for the above offence is for a term of imprisonment not exceeding 10 years.*

4. *The Summary of Facts which formed the basis of the respondent's guilty plea<sup>1</sup> provided as follows:*

**CIRCUMSTANCES**

**Burglary – CRN: 19076001235**

*On the 19<sup>th</sup> of the June [sic] 2019, at about 8.20 pm, the Defendants have gone to the address of [redacted].*

*Two of the Defendants, Lee Anne Allen, and [redacted] forced entry by pushing past the two female lawful occupiers of the address uninvited and with the intention of locating the complainant, [redacted] who was allegedly having an affair with a female from the address.*

*The Defendants were told to leave and refused to do so. A verbal has ensued and the two male Defendants entered the address.*

*The Defendants attempted to gain entry to a bedroom inside the dwelling after being refused entry to the room.*

*All four Defendant's [sic] forced entry by pushing past an occupier, opening a closed door and entering the bedroom.*

**Wounds with intent to injure – CRN: 19096001236**

*Inside the bedroom, the Defendants located the complainant in the room and one of the Defendants, [redacted] engaged in an assault where he forced to [sic in original] the complainant to the ground.*

*The complainant was naked other than a towel around his waist.*

*The Defendant, [redacted] punched the complainant ten times with a closed fist around the head.*

*Three punches connected with the complainants [sic in original] jaw.*

*In an attempt to avoid further assaults, the complainant escaped to the bathroom to uplift his property.*

*The Defendant, [redacted] and [redacted] entered the bathroom to continue the assault.*

*The Defendant, [redacted] has punched the complainant twice in the shoulder with a closed fist.*

*During this altercation, the shower glass and the towel rail have been broken.*

*Throughout this altercation, the two female Defendant's [sic in original] and ALLEN have been verbally abusive towards the complainant and occupiers, inciting the assault and the Defendant, [redacted] has taken photos of the incident.*

---

<sup>1</sup> Annexed to the Summary of Facts for the charge but not duplicated here.

**INJURIES TO VICTIM**

*The complainant was hospitalised at Timaru and Christchurch Hospital with a fractured jaw which required emergency surgery. His treatment is ongoing.*

**PROPERTY DAMAGE**

*A towel rail and shower glass were broken in the bathroom in the address.*

**REPERATION [sic in original]**

*Reparation is sought to a yet to be determined amount.*

**DEFENDANT COMMENTS**

*The Defendant, ALLEN, declined to make any statement.*

*The Defendant has previously appeared before the Court*

5. *The respondent pleaded guilty to the charge of being a party to burglary, and was convicted and sentenced on that charge to six months' community detention and intensive supervision for one year on 14 October 2021. The charge of wounding with intent to injure referenced in the Summary of Facts was withdrawn as part of a resolution arrangement reached with the Crown.*
6. *The respondent's (then) active charges were discovered by the Teaching Council ("Council") in the course of a Police vetting check in 2019.*

**Teacher's response**

7. *On 7 November 2019, at the request of the Council, the respondent signed an undertaking not to teach (UNTT"). Following her entry of a guilty plea to a charge of parties to burglary (and withdrawal of the wounding with intent to injure charge), that UNTT was lifted by the Council on 23 November 2021.*
8. *On 8 March 2020, through her Counsel, the respondent provided an email response to the Council's draft investigation report. In that email, Counsel for the respondent advised that prior to sentencing, the respondent participated in a restorative justice conference with the victim. Counsel advised that during that conference the respondent apologised for her actions, and that the victim accepted her apology.*
9. *Counsel for the respondent also provided the Council with a copy of a report on the topic of the respondent's cultural background, which was provided to the Court in advance of the respondent's sentencing hearing. The writer of that report noted that following her offending, the respondent had begun to engage in counselling, and had expressed remorse for her offending.*
10. *The respondent advised that she intends to return to teaching in the future."*

7. Section 493 of the Act provides that all convictions punishable by 3 months' imprisonment or more must be reported to the Council. Here, a conviction for burglary under section 231 of the Crimes Act carries a maximum penalty of 10 years' imprisonment.
8. In cases involving a referral of convictions, the Tribunal is required to make an "adverse finding" against a teacher. The Tribunal and the District Court have both previously held that it may make an adverse finding where the teacher's conduct "reflects adversely on the respondent's fitness to be a teacher" (*CAC v S*, Auckland DC, CIV 2008 004001547, 4 December 2008 and *CAC v Teacher* NZTDT 2005/1, 4 November 2005).
9. In assessing whether a teacher's fitness to teach has been affected, the Tribunal in *CAC v Crump* NZTDT 2019/12 emphasised the focus to be (at [42]):
 

[whether] the teacher's conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher's peers or by the community.
10. The Tribunal is not required to make a formal finding of serious misconduct, although the threshold for serious misconduct may inform the Tribunal's decision on whether to make an adverse finding (*CAC v Ali* NZTDT 2021/11, 28 October 2021).
11. Section 10 of the Act defines serious misconduct:

***serious misconduct*** means conduct by a teacher –

(a) *that –*

(i) *adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 or more students; or*

(ii) *reflects adversely on the teacher's fitness to be a teacher;*

*or*

(iii) *may bring the teaching profession into disrepute; and*

(b) *that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.*

12. As confirmed by the District Court in relation to the identical test under section 378 of the Education Act 1989 (the “former Act”),<sup>2</sup> the test under section 10 is conjunctive, meaning that as well as meeting one or more of the three adverse consequences, a teacher's conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct, pursuant to Rule 9 of the Teaching Council Rules 2016.
13. The criteria for reporting serious misconduct are found in the Teaching Council Rules 2016 (the “Rules”). The Tribunal also accepts the CAC’s submission that, if established, the respondent’s conduct would fall within the following sub-rules of Rules 9(1):
- (a) Rule 9(1)(j): an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more.
  - (b) Rule 9(1)(k): an act or omission that brings, or is likely to bring, the teaching profession into disrepute.
14. The Tribunal also considers that both Rule 9(1)(j) and Rule 9(1)(k) is engaged. The test under Rule 9(1)(k) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the respondent’s behaviour.<sup>3</sup>

### **Ngā Kōrero a te Kōmiti – CAC and Respondent Submissions**

#### *CAC submissions*

15. In summary, the CAC submits:
- (a) The respondent’s conviction warrants an adverse finding. Serious criminal offending, regardless of whether it is committed outside of the teaching environment, is contrary to the behaviour which teachers (and those otherwise authorised to teach) are expected to model at all times. Such offending reflects poorly on the respondent’s fitness to teach; and
  - (b) A penalty of censure should be imposed, for the same reasons.

---

<sup>2</sup> *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018 at [64]

<sup>3</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]; *CAC v Collins* NZTDT 2016/43, 24 March 2017.

16. The CAC points out that disciplinary proceedings are not intended to punish a teacher a second time (eg *CAC v Korau* NZTDT 2017/17, 26 August 2017 and *Z v Dental Complaints Assessment Committee* [2008] NZSC 55). Rather, says the CAC, disciplinary proceedings are designed to further the Teaching Council's overriding purpose of ensuring safe and high quality leadership, teaching and learning through raising the status of the profession. The CAC submits that disciplinary proceedings further this purpose by protecting the public through the provision of a safe learning environment for students and maintaining professional standards and the public's confidence in the profession. This, as the Tribunal held in *CAC v Bird* NZTDT 2017/5, 3 July 2017, is achieved by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required.
17. The CAC also refers to the Code of Professional Responsibility (the "Code") which sets out the high standards for ethical behaviour that are expected of every teacher. The CAC submits that the respondent has failed to model the basic values widely accepted in society, such as adherence to the law, values which have been confirmed in the Code. The CAC contends that the public will likely be reluctant to trust a profession whose members engage in behaviour that under New Zealand's criminal law carries a maximum sentence of 10 years' imprisonment. The decision to forcibly gain entry to a property and then verbally abuse a person inside while he was being violently attacked by the respondent's associates is concerning, says the CAC, and demonstrates a lack of judgement. The CAC emphasises that those who teach are expected to role model positive social behaviours for learners and, by choosing to offend as she did, the respondent failed to meet his expectation, notwithstanding that the offending occurred outside of a professional context.

#### *Respondent submissions*

18. The respondent, through her counsel, supports the submissions filed by the CAC. She has also provided a copy of her cultural report prepared for her District Court sentencing, which the Tribunal is appreciative of receiving and confirms it has been read and considered. Without needing to go into detail as to the contents of that report, the Tribunal wishes to record that it hopes the respondent continues to take the positive steps towards her rehabilitation and restoring her mana that are outlined in the report.

## Kupu Whakatao – Decision

19. The Tribunal finds that the respondent's conviction warrants the Tribunal making an adverse finding. The respondent's offending was serious, carrying with it a possible heavy penalty of imprisonment. Such behaviour does not reflect well upon the profession and the respondent's fitness to teach. This is particularly so where the offending related to a broader incident involving violence and damage to property, and in a situation where the respondent was part of a group forcing entry to a property and engaging in abusive behaviour.
20. The Court itself viewed the respondent's conduct as serious, imposing on her a sentence of both intensive supervision and community detention, reflecting the severe manner in which the community regards offending of this character.
21. There are analogous cases which support the Tribunal's finding in this case.
22. In *CAC v Wallace* NZTDT 2017/21, the Tribunal considered a teacher's conviction for burglary as part of a notice of charge, which also alleged the teacher had admitted to purchasing methamphetamine. In response to being dismissed, the teacher and an acquaintance had gone to the school, deactivated and alarm system and uplifted electronic and musical instrument. In relation to the burglary part of the charge, the Tribunal made an adverse finding.
23. In *CAC v Teacher* NZTDT 2013/50, a teacher's two convictions for wilful damage to a house while intoxicated was found by the offending to be "*serious enough for us to feel able to reach an adverse conclusion*".
24. In *CAC v Teacher B* NZTDT 2020/55, where the teacher had convictions for trespass, common assault and wilful damage in respect of an incident involving her ex-partner, the Tribunal made an adverse finding noting (as is also applicable here):

Where a teacher has engaged in serious behaviour as the respondent has done here, it is incumbent on the Tribunal to make an adverse finding to reflect the fact that teachers are in charge of our most vulnerable members of society, and it does not reflect well on the profession to react violently to any situation, regardless of the circumstances.



## Whiu - Penalty

25. Having determined that this case is one in which we consider warrants and adverse finding, the Tribunal must now turn to consider what is an appropriate penalty in the circumstances:

### **500 Powers of Disciplinary Tribunal**

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
  - (b) *censure the teacher:*
  - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
  - (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
  - (e) *annotate the register or the list of authorised persons in a specified manner:*
  - (f) *impose a fine on the teacher not exceeding \$3,000:*
  - (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
  - (h) *require any party to the hearing to pay costs to any other party:*
  - (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
  - (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) *Despite subsection (1), following a hearing that arises out of a*

*report under 493 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*

(3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

26. We note that, in determining penalty, the Tribunal must ensure that the three overlapping principles are met, that is, the protection of the public through the provision of a safe learning environment for students and the maintenance of both the professional standards and the public's confidence in the profession.<sup>4</sup> We refer to the decisions of the superior Courts which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may have that effect.<sup>5</sup>
27. In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers<sup>6</sup>:
- (a) Protecting the public;
  - (b) Setting the standards for the profession;
  - (c) Punishment;
  - (d) Rehabilitation;
  - (e) Consistency;
  - (f) The range of sentencing options;
  - (g) Least restrictive;
  - (h) Fair, reasonable and proportionate.

---

<sup>4</sup> *CAC v McMillan*, NZTDT 2016/52.

<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA).

<sup>6</sup> Above n 16 at [40] – [62]

28. The Tribunal does not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty.
29. In its submissions on penalty, the CAC refers to the penalties imposed by the analogous cases discussed above, and submits that the only penalty available to the Tribunal on a conviction referral (if it considers a penalty ought to be imposed), and in a case where the respondent no longer holds a LAT (and does not hold registration) is censure under section 500(1)(b) of the Act, because the majority of the Tribunal's power under section 500 of the Act are predicated on the respondent holding a practising certificate or other authority to teach, which the respondent does not have.
30. The respondent supports the CAC's submissions.
31. Bearing in mind the above, as well as the obligation upon us to impose the least restrictive penalty in the circumstances, pursuant to section 404(1) of the Act, we therefore order as follows:
  - (a) Censure under section 500(1)(b) of the Act.
32. We accept, as the Tribunal did in *CAC v Glazier* NZTDT 2018/59, that the only disciplinary response available in these circumstances is censure. As the Tribunal noted in *Glazier*, if the respondent intends to return to teaching she will need to satisfy the Council that she is of good character and fit to teach.

#### **Utu Whakaea – Costs**

33. Because this is a charge arising out of a conviction, the Tribunal is unable to make a costs award.<sup>7</sup>

*R. E. Schmidt-McCleave*

---

Rachael Schmidt-McCleave  
Deputy Chair

---

<sup>7</sup> Section 500(2) of the Act.

NOTICE - Right of Appeal under Section 504 of the Education and Training Act 2020

1. This decision may be appealed by the teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).